

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #02-10**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of Tennessee's sales and use tax to a church purchasing building materials for a contractor to construct an addition to the church's sanctuary.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed:

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification by the Commissioner shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] of [CITY, STATE – NOT TENNESSEE] (the Contractor) is the general contractor on a construction project in which [NAME OF CHURCH], [CITY, TENNESSEE], Tennessee (the Church) will have a new addition to its sanctuary built.

The addition will be used as an extension of the Church's sanctuary for simultaneous church services. Although the new addition is not directly under the same roof system as the current sanctuary, it is connected by two, 14-foot, fully-enclosed, heated, roofed hallways.¹

The Church purchases all the materials used in this construction project, obtaining title to them, while utilizing their tax exempt status. The Contractor receives no profit from the Church's purchase of the materials.

The Contractor requested rulings on the following issues.

ISSUES

1. Is the Contractor liable for use tax on materials used in the construction of the addition to [NAME OF CHURCH]?
2. Will the Church be liable for sales tax when purchasing the materials used in the construction of the building addition to [NAME OF CHURCH] by Contractor?

RULINGS

1. No, except for any previously untaxed materials (excluding carpet) that the Contractor first sells to the Church and then uses in its construction of the building addition.
2. No, provided the Church presents a valid exemption certificate to its suppliers.

¹ Copies of the blueprints showing the connection between the existing building and the addition after construction were attached to the ruling request.

It should also be noted that a construction project or a building constructed for a church need not be physically connected to a church's sanctuary to qualify as "church construction" under the Tennessee Sales and Use Tax laws.

ANALYSIS

1. Materials used by a contractor for the construction of real property, since they constitute tangible personal property, are subject to sales or use tax unless exempted by law.

However, a church may purchase construction materials without the payment of sales tax provided that the church has received a certificate of exemption from the commissioner of revenue as contemplated by Tenn. Code Ann. Section 67-6-322(e).

Further, Tennessee law provides for a limited exemption for a contractor to use such materials for church construction without the payment of use tax on the materials. Tenn. Code Ann. Section 67-6-209(b) provides, in applicable part, as follows:

Where a contractor . . . uses tangible personal property in the performance of the contract . . . , **except where the title holder is a church, . . . and the tangible personal property is for church . . . construction**, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property . . . (Emphasis added. Tenn. Code Ann. Section 67-6-209(b).)

The Department has typically looked at several aspects of a building being constructed by or on behalf of a church to determine whether it qualifies as “church construction” under this statute.

- (1) Does it qualify for exemption from property taxes?
- (2) Will it not be used for commercial purposes? and
- (3) Will it be used for commonly recognized church functions?

If these questions are each answered affirmatively with respect to particular construction, the Department has concluded the building is “church construction” under Tenn. Code Ann. Section 67-6-209(b).

Tenn. Code Ann. Section 67-5-212(a)(1) generally exempts from property tax the real property owned by a religious institution which is occupied and used by such institution purely and exclusively for carrying out one or more purposes for which the institution was created.

It is presumed that the first question can be answered in the affirmative based on the facts presented by the Contractor. The building addition will be used as an extension of the sanctuary for simultaneous church services. Such use would appear to be within the purposes for which the church was created. However, the Contractor may need to verify

that a property tax exemption has been or will be obtained by the Church from the local taxing authority.

The second question appears also to be able to be answered affirmatively. Since the facts state the Church's building addition will be used as a sanctuary extension – clearly a religious purpose – no commercial purpose is apparent.

Finally, the third question can also be answered in the affirmative. The use of the construction as a sanctuary addition is a commonly recognized function of churches.

Therefore, the building addition constitutes “church construction” and materials which the Church purchases and to which it takes title can be used by the Contractor and be exempt from use tax upon the Contractor pursuant to Tenn. Code Ann. Section 67-6-209(b).

One important caveat to this conclusion is in order. If the Contractor purchases materials, then sells them to the Church (transferring title and possession) and finally uses the materials previously sold to the Church to construct the church addition, the Contractor may not initially purchase such materials on a resale certificate. It must pay the sales tax on those materials because it may not take advantage of the exemption afforded by a resale certificate under Tennessee law.

Tenn. Code Ann. Section 67-6-209(c) provides in applicable part as follows:

. . . However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty **does not constitute a sale**, except as provided in § 67-6-102(8), and the **contractor shall not be permitted on this basis to obtain the benefit of any exemptions** or reduced tax rates available to manufacturers under § 67-6-206 or § 67-6-102(24)(E) . . . (Emphasis added.)

This statutory provision prevents the Contractor's sale of materials to the Church from being considered a sale under the tax laws and thus the Contractor cannot purchase the materials on a resale certificate. However, if such were done, the Contractor's subsequent use of the materials – title to which has already passed to the Church – would subject the Contractor to a use tax on its cost of the materials purchased.

Nevertheless, the caveat stated above would not apply if the material in question was carpet. Tenn. Code Ann. Section 67-6-209(b) specifically provides that Tennessee sales and use tax would not apply to carpet installed for a church when the church is exempt from sales tax. Thus, even if the Contractor sold the carpet to the Church and then installed it on behalf of the church, the sales or use tax would not apply to the carpet under this statute.

2. As explained in the Analysis of Ruling 1. above, Tenn. Code Ann. Section 67-6-322 permits a church to purchase tangible personal property without the payment of sales

tax provided it has had issued to it a certificate of exemption by the commissioner of revenue as contemplated by subsection (e). The Church should present its valid certificate of exemption issued by the commissioner of revenue to its supplier when purchasing the materials.

Thomas R. Bain
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: April 26, 2002